

UNITED STATES DISTRICT COURT

District of Nebraska

UNITED STATES OF AMERICA
V.

PERKINS & PERKINS CO., LCC

JUDGMENT IN A CRIMINAL CASE (For Organizational Defendants)

CASE NUMBER: 8:18CR84

J. WILLIAM GALLUP

Defendant Organization's Attorney

THE DEFENDANT ORGANIZATION:

☒ pleaded guilty to count(s) 1 of the Information.

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:1001	FALSE STATEMENTS	9/22/2018	1

The defendant organization is sentenced as provided in pages 2 through 9 of this judgment.

☐ The defendant organization has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's

Federal Employer I.D. No.: Unknown

Defendant Organization's Principal Business Address:

3223 N. 45th Street
Suite 312
Omaha, NE 68104

12/10/2018

Date of Imposition of Judgment

s/John M. Gerrard

Signature of Judge

John M. Gerrard, Chief United States District Judge

Name of Judge

Title of Judge

12/11/2018

Date

Defendant Organization's Mailing Address:

3223 N. 45th Street
Suite 312
Omaha, NE 68104

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PROBATION

The defendant organization is hereby sentenced to probation for a term of :
three (3) years.

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page (if indicated below).

STANDARD CONDITIONS OF SUPERVISION

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees; and
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

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ADDITIONAL PROBATION TERMS

1. The defendant shall maintain its corporate status in Nebraska, and shall maintain all corporate formalities, including a registered agent.
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report each month.
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4. The defendant shall notify the probation officer at least ten days prior to any change in ownership of its shares or other corporate equity.
5. The defendant shall not do business with any persons engaged in criminal activity and shall not do business with any person convicted of a felony, unless granted permission to do so by the probation officer.
6. The defendant shall permit a probation officer to visit and inspect its premises and its business records at any time.
7. The defendant shall notify the probation officer within seventy-two hours of being questioned by a law enforcement officer, including representatives of administrative enforcement agencies charged with enforcing employment practices.
8. The defendant shall report to the United States Probation office for the District of Nebraska between the hours of 8:00 am and 4:30pm, 111 South 18th Plaza, Suite C79, Omaha Nebraska, (402) 661-7555, within seventy-two (72) hours of being placed on probation and, thereafter, as directed by the probation officer.

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SPECIAL CONDITIONS OF SUPERVISION

9. Perkins & Perkins will cooperate with the United States Department of Labor to include consenting to a debarment precluding participation in federal contracts. Perkins Co. further acknowledges the United States Department of Labor Wage and Hour Final Determination and Default Judgment entered against it on or about April 8, 2016, and Perkins Co. agrees to comply with the terms set forth therein.

10. Restitution shall be ordered in the amount of \$75,666.69. Restitution is due and owing to the following victims:

Victim Amount:

Knife River Construction \$21,708.16
2220 Hawkeye Drive
Sioux City, IA 51105

Simon Contractors \$36,793.79
P.O. Box 535
Brooklyn, IA 52211

Great Plains Power Inc. \$5,536.76
(formerly Mid-Plains Power)
3716 W. Old Hwy 30
Grand Island, NE 68803

Manatt's Inc. \$10,956.80
P.O. Box 535
Brooklyn, IA 52211

Lueder Construction \$671.18
9999 J Street
Omaha, NE 68127

11. Perkins & Perkins shall provide the probation officer with access to any requested financial information.

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CRIMINAL MONETARY PENALTIES

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 400.00	\$	\$ 75,666.69

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Knife River Construction	\$21,708.16	\$21,708.16	
Simon Contractors	\$36,793.79	\$36,793.79	
Great Plains Power Inc. (formerly Mid-Plains Power)	\$5,536.76	\$5,536.76	
Manatt's Inc.	\$10,956.80	\$10,956.80	
Lueder Construction	\$671.18	\$671.18	

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TOTALS	\$ <u>75,666.69</u>	\$ <u>75,666.69</u>
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- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant organization shall pay interest on restitution or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☒ The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:
- ☒ the interest requirement is waived for the ☐ fine ☒ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☒ Lump sum payment of \$ 400.00 due immediately, balance due

- ☐ not later than _____, or
☐ in accordance with ☐ C or ☐ D below; or

B ☐ Payment to begin immediately (may be combined with ☐ C or ☐ D below); or

C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☒ Special instructions regarding the payment of criminal monetary penalties:

Without limiting the foregoing, and following release from prison, the defendant shall make payments to satisfy the criminal monetary penalty in the following manner: (a) monthly installments of \$100 or 3% of the defendant's gross income, whichever is greater; (b) the first payment shall commence 30 days following the defendant's discharge from incarceration, and continue until the criminal monetary penalty is paid in full; and (c) the defendant shall be responsible for providing proof of payment to the probation officer as directed.

The criminal monetary penalty is due in full on the date of the judgment. The defendant is obligated to pay said sum immediately if he or she has the capacity to do so. The United States may institute civil collection proceedings at any time to satisfy all or any portion of the criminal monetary penalty.

All financial penalty payments are to be made to the Clerk of the U. S. District Court, 111 S. 18th Plaza, Suite 1152, Omaha, NE 68102-1322

All criminal monetary penalties are made to the clerk of the court.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant organization shall pay the cost of prosecution.

☐ The defendant organization shall pay the following court cost(s):

☐ The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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STATEMENT OF REASONS

☒ The court adopts the presentence report and guideline applications **WITHOUT CHANGE**.

OR

☐ The court adopts the presentence report guideline applications **BUT WITH THESE CHANGES**:

Guideline Range Determined by the Court:

☐ The defendant organization is a criminal purpose organization pursuant to U.S.S.G. §8C1.1.

OR

☐ The calculation of the guideline fine range is unnecessary because the defendant organization cannot pay restitution pursuant to U.S.S.G. §8C2.2(a).

OR

Total Offense Level: 12
Base Fine: \$75,666.69
Total Culpability Score: 4
Fine Range: \$ 60,533.35 to \$ 121,066.70

☐ Disgorgement amount of \$ _____ is added to fine pursuant to U.S.S.G. §8C2.9.

☐ Fine offset amount of \$ _____ is subtracted from fine pursuant to U.S.S.G. §8C3.4.

☒ Fine waived or below the guideline range because of inability to pay pursuant to U.S.S.G. §8C.3.3.

RESTITUTION DETERMINATIONS

Total Amount of Restitution: \$ 75,666.69

☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).

☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

☐ For offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).

☐ Restitution is not ordered for other reasons:

☐ Partial restitution is ordered, pursuant to 18 U.S.C. § 3553(c) for the following reason(s):

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STATEMENT OF REASONS

☒ The sentence is within the guideline range and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

- ☐ The sentence departs from the guideline range:
- ☐ upon motion of the government, as a result of a defendant's substantial assistance, or
 - ☐ for the following specific reason(s):

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ADDITIONAL FINDINGS AND GUIDELINE APPLICATION CHANGES

The court adopts the parties' Rule 11(c)(1)(C) plea agreement and finds a 3 year term of probation and the restitution of \$75,666.69 are sufficient to meet all the goals of the criminal justice system, including general deterrence and specific deterrence.